IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No. 469 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/02/2005 in WP No. 25227 OF 2004 on the file of the High Court.)

Between:

M/s.Sri Tirumala Highway Filling Station (Terminated) Jaggaiahpeta, Krishna District, rep., by its Proprietor
Bodepudi Venkata Rao, s/o late Sambaiah, Dr.No.30-19-12, Chaparalavari Street,Seetharampuram,
Vijayawada-520 002, Krishna District, A.P.,

..... APPELLANT

AND

1. The Chairman and Managing Director, Hindustan Petroleum Corporation Limited, Registered Office 17, Jamshedji Tata Road, Mumbai-400 020.
2. The Senior Regional Manager-Retail, Hindustan Petroleum Corporation Ltd, Vijayawada Retail Regional Office,
Kattubadipalem, Pinapaka Post, G.Konduru Mandalam, Kondapalli-521 228, Krishna District.
3. Shri G.Baskaran, Sole Arbitrator & Deputy General Manager (O&D), Hindustan Petroleum Corporation Limited, Talamuthu Natarajan Building, 4th Floor, 8, Gandhi Irvin Road, Egmore, Chennai-600 008.
4. Union of India, rep., by its Secretary, Ministry of Petroleum & Natural Gas, 201, "A" Wing, Sastry Bhawan, New Delhi-110 001.

.....RESPONDENTS

Counsel for the Appellant: Smt. SUVARNA JAYASRI

Counsel for the Respondents: Mr. A.RAJASHEKAR REDDY

(ASST.SOLICITOR GENERAL)

The Court made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

This Writ Appeal has been filed against the order of the learned Single Judge dismissing the appellant's writ petition being without any merit on the ground that the appellant ought to have questioned the Award of the arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996, and, that the writ petition is not maintainable.

Learned counsel for the appellant, placing reliance upon the decision of the Supreme Court in **Dharma Prathisthanam v. M/s. Madhok Construction Pvt. Ltd.** argues that since the very appointment of the arbitrator was a nullity and contrary to the settled procedure, the appellant is justified in invoking the jurisdiction under Article 226 of the Constitution of India and it is not necessary for the appellant to question the award by invoking the provisions of the Arbitration and Conciliation Act, 1996.

Having considered the submissions made at the Bar, we are of the view that the stand taken by the appellant is erroneous and the decision of the Supreme Court in **Dharma Prathishthanam's case (1 supra),** is not at all applicable. In **Dharma Prathishthanam's case (1 supra),** the Supreme Court dealt with a matter in which appointment of arbitrator was made under the Arbitration Act, 1940 without consent of the party, namely, the appellant. The appellant therein has neither conceded to the appointment of, or, making reference to, the arbitrator and had also raised objection to the invalidity of the entire proceedings from the initial stage till giving of the Award though he had not filed objections to the Award within the time. The appellant had not also participated in the proceedings before the Arbitrator. In those circumstances, it was held that the appointment of arbitrator without the consent of the party was void and a nullity.

In the instant case, the appellant before us had filed Writ Petition No.9885 of 2002 in this Court, in which, on 4.6.2002, an order was passed by the learned Single Judge

disposing the said Writ Petition by giving liberty to the appellant to approach the Managing Director of the respondent-Company by making appropriate application within a period of two weeks with further direction that, in case, such a petition is made, the Managing Director shall consider the same in terms of the Dealership Agreement and initiate the process of Arbitration proceedings and it will be open for the petitioner to raise all grounds, which were taken in the writ petition. On 11.6.2002, the petitioner had addressed a letter to the Managing Director invoking the arbitration clause and praying the Managing Director and the Sole Arbitrator of HPCL, Mumbai to allow the arbitration application and pass consequential orders as prayed in the said application. Needless to add that the appellant participated in the proceedings before the arbitrator and ultimately the arbitrator proceeded to make his award. Challenging the award, the appellant filed the writ petition. Since the petitioner did not bring the case for setting aside the award within the provisions of Section 34 of the Arbitration and Conciliation Act, 1996, the writ petition was dismissed as not maintainable.

Since, it is at the behest of the appellant that the arbitrator was appointed, who has proceeded to make his award, we find no ground to interfere and proceed to dismiss the Writ Appeal as wholly misconceived. No costs.

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DEVINDER GUPTA, C.J.

29.3.2005.

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B.SESHASAYANA REDDY, J.

VR.

To

1. The Chairman and Managing Director, Hindustan Petroleum Corporation Limited, Registered Office 17, Jamshedji Tata Road, Mumbai-400 020.
2. The Senior Regional Manager-Retail, Hindustan Petroleum Corporation Ltd, Vijayawada Retail Regional Office,
Kattubadipalem, Pinapaka Post, G.Konduru Mandalam, Kondapalli-521 228, Krishna District.
3. Shri G.Baskaran, Sole Arbitrator & Deputy General Manager (O&D), Hindustan Petroleum Corporation Limited, Talamuthu Natarajan Building, 4th Floor, 8, Gandhi Irvin Road, Egmore, Chennai-600 008.
4. The Secretary to Union of India, Ministry of Petroleum & Natural Gas, 201, "A" Wing, Sastry Bhawan, New Delhi-110 001.

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